EFFECT OF A JUDGMENT ON ADVERSE POSSESSION.—Since the general basis for the Statute of Limitations in real actions is the acquiescence of the disseisee in the hostile possession of the disseisor,[1] it is fundamental that if an action is instituted by the latter before the statutory period has elapsed, "the running of the statute, and the adverse possession on which it depends are, at least, suspended."[2] The cases are uniform in holding that if the suit so instituted is unsuccessful, the suspension of the running of the statute is merely temporary, and after judgment the action cannot be considered to have broken the continuity of the adverse holding.[3] The authorities are likewise agreed that if the disseisee is successful in the action, and at any time during the life of the judgment possession of the land is obtained thereunder, the interruption to the adverse holding is thereby made effective and the interruption dates as of the time of the institution of the suit.[4] If, however, the disseisee obtains judgment, but fails to enforce it by appropriate entry, the courts are at present divided as to whether such judgment alone is sufficient to break the continuity of the holding, thereby compelling the disseisor to start anew the running of the statute.

The earlier cases show practical unanimity in holding that such judgment did not interrupt the running of the statute. The result obtained is placed on various grounds. A judgment in ejectment at common law decided only that the plaintiff was entitled to the possession for the term laid in the demise,[5] and was in no way conclusive as to the title between the parties.[6] It was consequently the rule that if the plaintiff did not enter during the term, the judgment was of no effect.[7] This principle was the basis of several early cases[8] cited later as authority for the view that a judgment did not interrupt the running of the statute; but with the statutory change in the nature of ejectment,[9] this reasoning is no longer of force. A second class of cases based the decision reached on the short ground that there had been no interruption of the defendant's possession;[10] but a number of authorities rest upon the theory on which the issue really joins—asserting that the judgment itself has no effect in changing the relative position of the parties with regard to the nature of the disseisee's possession.[11]

That naked possession alone is not sufficient to satisfy the statute is of

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[1]Abell *v.* Harris (Md. 1841) 11 J. & G. 367.

[2]Sedgwick & Wait, Trial of Title to Land § 743.

[3]Langford *v.* Poppe (1880) 56 Cal. 73; Harris *v.* Dennis (Pa. 1814) 1 S. & R. 236; Workman *v.* Guthrie (1857) 29 Pa. St. 495, at 513.

[4]Dunn *v.* Miller (1881) 75 Mo. 260; Breon *v.* Rubrecht (1897) 118 Cal. 469; Ball *v.* Lively (Ky. 1833) 1 Dana 60.

[5]Stevens *v.* Hughes (1858) 31 Pa. St. 381.

[6]Taylor *v.* Atkyns (1757) 1 Burr. 60, at 114; Strother *v.* Lucas (1838) 12 Pet. 410 at 434; Botts *v.* Shields (Ky. 1823) 3 Litt. 32.

[7]Aslin *v.* Parkin (1758) 2 Burr. 665.

[8]Kennedy *v.* Reynolds (1855) 27 Ala. 364; Smith *v.* Hornback (Ky. 1823) 4 Litt. 233; Jackson *v.* Haviland (N. Y. 1816) 13 Johns. 229; Bright *v.* Stevens (Del. 1855) 1 Houst. 255.

[9]Miles *v.* Caldwell (1865) 2 Wall. 35.

[10]Powell *v.* Smith (Pa. 1833) 2 Watts 126; Smith *v.* Trabue (1830) 1 McLean 87.

[11]Carpenter *v.* Natoma Water Co. (1883) 63 Cal. 616; Bradford *v.* Wilson (1903) 140 Ala. 633; Batterton *v.* Chiles (Ky. 1851) 12 B. Mon. 348; Rook *v.* Greenewald (1903) 22 Pa. Supr. Ct. 641; Caldwell *v.* Walters (1853) 22 Pa. St. 378; Forbes *v.* Caldwell (1888) 39 Kan. 14.

course recognized by all courts;[12] but as to the nature of the intent necessary to turn such possession into a disseisin there is considerable conflict.[13] It is substantially agreed, however, that it is at least necessary that there be the intention to hold the land as owner, and in hostility to the true title.[14] Consequently any admission on the part of the disseisee that the title is in the disseisor will effectually destroy the adverse character of his holding.[15] It is not necessary that this admission follow any set form, or be in writing[16]—it is sufficient that there has been a recognition that title is in the disseisee.

It is in pursuance of this theory that several jurisdictions have recently held that the recovery of a judgment in ejectment is sufficient to break the continuity of the disseisor's adverse holding. In *Gower* v. *Quinlan*[17] the fact that the disseisor had been ordered to make a conveyance was held sufficient to destroy the adverse nature of the holding; and in *Hintrager* v. *Smith*,[18] a former decree against the defendant quieting the plaintiff's title was considered to have had a like effect. The theory was finally applied in *Snell* v. *Harrison*,[19] in which the judgment recovered had been in ejectment. In most jurisdictions to-day ejectment is between the real parties in interest and is considered conclusive as to the title asserted as well as the right to possession. Even in states allowing further actions between the parties with regard to the same title,[20] the first adjudication is held conclusive except as to such latter suits.[21] The judgment therefore is effective as an estoppel by record as to the plaintiff's title at the time of the judgment. To prove adverse possession in a later suit, the defendant must prove not only the actual possession, but also the continuous claim of title in himself.[22] It is submitted that it is the better view that the previous adjudication should estop the defendant from asserting that he held under such a claim in opposition to the judgment rendered. It would follow from this theory that the judgment would create a break in the adverse possession; but since the judgment is not conclusive as to claims arising subsequent to the action, it would not preclude the defendant from a future disseisin under another claim of right. In Missouri,[23] the estoppel is available only during the life of the judgment; if the plaintiff does not take advantage thereof within the time limited, the defendant gains title by adverse possession as if the judgment had not been rendered. This qualification has no foundation in principle and appears to be merely the result of an effort to reconcile earlier decisions. The giving of full effect to a

[12]Baber *v.* Henderson (1900) 156 Mo. 566.

[13]French *v.* Pearce (1831) 8 Conn. 439; Newton *v.* R. R. Co. (1835) 110 Ala. 474; Grube *v.* Wells (1871) 34 Ia. 148.

[14]Bond *v.* O'Gara (1900) 177 Mass. 139; Sattenwhite *v.* Rosser (1884) 61 Tex. 166; Wooster *v.* Lord (1868) 56 Me. 265.

[15]Sample *v.* Reeder (1894) 107 Ala. 227; St. Paul *v.* Ry. Co. (1895) 63 Minn. 330.

[16]Lamb *v.* Foss (1842) 21 Me. 240; Cleveland *v.* Ry. Co. (1899) 93 Fed. 113, at 132; Keneda *v.* Gardner (N. Y. 1842) 4 Hill 469.

[17](1879) 40 Mich. 572.

[18](1893) 89 Ia. 270.

[19](1895) 131 Mo. 495.

[20]N. Y. Code Civ. Proc. § 1525.

[21]Doyle *v.* Hallam (1875) 21 Minn. 515; Cagger *v.* Lansing (1876) 64 N. Y. 419; cf. Sturdy *v.* Jackaway (1866) 4 Wall. 174.

[22]See cases in notes 14 and 15, *supra*.

[23]Snell *v.* Harrison, *supra;* Sanford *v.* Herron (1900) 161 Mo. 176.

judgment by way of estoppel seems sound on principle, and the present tendency,[24] as illustrated in a recent case, *Rao* v. *Oke* (1908) 11 Bombay L. Rep. 51, is to uphold this view.

TORT LIABILITY OF A LUNATIC'S COMMITTEE.—Although the positions of trustees, executors and administrators, receivers, and guardians of infants and insane persons are analogous in that the property involved is administered for the benefit of others, only trustees, executors, and administrators are vested with legal title.[1] Incidental to bare ownership they enjoy some prerogatives of title, but are also liable to its burdens. It is fundamental, however, that the appointment of a receiver, guardian, or committee of a lunatic, does not divest the owner of title.[2] Their positions are, indeed, not identical. While the power to appoint receivers is deemed inherent in a Court of Equity because of the inadequacy of legal remedy,[3] and the appointment of a guardian was assumed by Chancery to carry out a duty resting on the King,[4] the supervision of a lunatic's affairs, originally exercised by the sovereign, was by him delegated to the Chancellor in person.[5] In general, in the absence of statutory authority, neither guardians nor committees may sue in their own names for the recovery of, or injury to, the property under their care.[6] But, in some jurisdictions, where the chancery guardian has been confused with guardians in socage, he is deemed to have a sufficient interest in the realty to sue.[7] However, the tendency is apparently to allow receivers to bring possessory actions,[8] although when they sue, or are sued, in their own or their representatives capacities, leave of the court must first be had.[9] This is also the New York rule in suits against the committee of a lunatic.[10]

Despite differences in their relation to the property, however, there is no necessary reason for a distinction in the tort liability of these persons. True, the liability of the trustee or executor for injuries to strangers from defective premises is put upon the ground that he is the owner of the land.[11] And it has been held in Massachusetts that a lunatic is liable for such injuries.[12] Nevertheless, although in New York, an infant under

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[24]Wade *v.* McDougal (1906) 59 W. Va. 113; Oberlein *v.* Wells (1896) 163 Ill. 101; see Barrell *v.* Trust Co. (1895) 27 Ore. 77.

[1]Woerner, Guardianship § 53.

[2]Van Horn *v.* Hann (1877) 39 N. J. L. 207; Rollins *v.* Marsh (1880) 128 Mass. 110; Pharis *v.* Gere (1888) 110 N. Y. 336; Lee *v.* Lee (1876) 55 Ala. 590; Ellicott *v.* Warford (1853) 4 Md. 80.

[3]Beach, Receivers §§ 1, 3.

[4]2 Story, Eq. Jur. §§ 1333-7.

[5]Van Horn *v.* Hann, *supra;* Guardian of Bergen *v.* Wallace (1896) 55 N. J. Eq. 192; Beverley's Case, 4 Coke 123b.

[6]Cocks *v.* Darson (1619) Hobart 215; Lane *v.* Schermerhorn (N. Y. 1841) 1 Hill 97; Granby *v.* Amherst (1810) 7 Mass. 1.

[7]Shoplane *v.* Roydler (1603) Cro. Jac. 55 and 98; People *v.* Byron (1802) 3 Johns. Cases 53; Hughe's Minors Appeals (1866) 53 Pa. St. 500; Brooks *v.* Brooks (N. C. 1843) 3 Ired. L. 389.

[8]Singerly *v.* Fox (1874) 75 Pa. St. 112; Gardiner *v.* Smith (N. Y. 1858) 29 Barb. 68.

[9]Davis *v.* Snead (Va. 1880) 33 Gratt. 705 at 709; Barton *v,* Barbour (1881) 104 U. S. 126.

[10]L'Amoureux *v.* Crosby (N. Y. 1831) 2 Paige 422.

[11]Moniot *v.* Jackson (N. Y. 1903) 40 Misc. 197; Parmenter *v.* Barstow (1900) 22 R. I. 245.

[12]Morain *v.* Devlin (1882) 132 Mass. 87.